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BEFORE THE ARIZONA CORPORATION

COMMISSIONERS

MIKE GLEASON - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

Arizona Corporation Commission
DOCKETED

APR 17 2007

DOCKETED BY

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IN THE MATTER OF THE
APPLICATION OF ARIZONA-
AMERICAN WATER COMPANY
FOR APPROVALS ASSOCIATED
WITH A TRANSACTION WITH THE
MARICOPA COUNTY MUNICIPAL
WATER CONSERVATION DISTRICT
NUMBER ONE

DOCKET NO. W-01303A-05-0718

**CLOSING BRIEF OF CHI
CONSTRUCTION COMPANY,
COURTLAND HOMES, INC. AND
TAYLOR WOODROW/ARIZONA,
INC.**

Intervenors CHI Construction Company ("CHI"), Courtland Homes, Inc. ("Courtland") and Taylor Woodrow/Arizona, Inc. ("Taylor Woodrow") (collectively, the "Developers"), through counsel undersigned, hereby file with the Arizona Corporation Commission ("Commission"), their Closing Brief for the evidentiary hearing in this matter that concluded on March 26, 2007.¹

I. REQUESTED RELIEF

At the hearing, the Administrative Law Judge ("ALJ") requested that the parties set forth, at the beginning of their respective opening briefs, the specific relief that is being requested of the Commission. Accordingly, Developers hereby request that the Recommended Opinion and Order ("ROO") contain Findings of Fact and Ordering Paragraphs consistent with the following:

- Arizona-American may not charge Developers new hook-up fees to the extent that such Developers have already paid hook-up fees based upon the existing Commission-approved tariff pursuant to the terms of their respective line extension or other agreements.²

¹ Developers were granted intervention in this matter on December 13, 2006.

² See page 6 herein.

- 1 • Arizona-American should be precluded from instituting a new service
- 2 moratorium and be required to set meters in circumstances where the
- 3 developer has supplied the required water to serve the increased demand
- 4 of a new project.³
- 5 • Arizona-American should use its best efforts to work with Maricopa
- 6 County Municipal Water Conservation District Number One (“MWD”) to
- 7 obtain both short-term and permanent water supplies to negate (where
- 8 possible) the requirement that additional wells must be drilled during
- 9 construction of the surface water treatment plant and thereafter.⁴
- 10 • Arizona-American should review its existing line extension and other
- 11 agreements in the Agua Fria District which require developers to drill new
- 12 wells in order to determine if the agreements should be amended to reduce
- 13 the number of required wells.⁵

14 **II. BACKGROUND**

15 **A. Procedural History**

16 On October 11, 2005, Arizona-American filed with the Commission an

17 application (“Initial Application”) in this matter in which it requested the Commission’s

18 approval of several actions related to a proposed joint project with MWD to build a

19 surface water treatment plant (“Plant”) known as the White Tanks Regional Water

20 Treatment Facility (“White Tanks Facility”) in Arizona-American’s Agua Fria Water

21 District (“Agua Fria District”). The Initial Application indicated that Arizona-American

22 and MWD executed a Memorandum of Understanding (“MOU”) under which the White

23 Tanks Facility was to be financed, built and owned by MWD. Arizona-American was

24 to obtain treatment services for its Agua Fria District under a long-term capital lease

25 with MWD, and an Arizona-American affiliate was to operate the White Tanks Facility

26 ³ See page 8 herein.

27 ⁴ See page 8-9 herein.

28 ⁵ See page 8-9 herein.

1 under an Operation and Maintenance Agreement with MWD. To reduce the rate impact
2 from the MWD capital lease, Arizona-American proposed to increase Central Arizona
3 Project Hook-Up Fees for new customers while discontinuing water facilities hook-up
4 fees ("Hook-Up Fees"). The net result would have been a total increase in overall hook-
5 up fees of approximately 38%. The Commission's Utilities Division Staff ("Staff")
6 later recommended retaining the Hook-Up Fees and increasing those fees by a reduced
7 amount.

8 On March 2, 2006, at the request of Arizona-American, a procedural order was
9 issued continuing the hearing set for March 7, 2006, to allow Arizona-American
10 additional time to finalize its deal with MWD. However, by June, 2006, it became
11 apparent to Arizona-American and MWD that they could not reach an agreement
12 regarding construction of the White Tanks Facility. On September 1, 2006, Arizona-
13 American filed a substantially revised application with the Commission requesting
14 approval of certain actions it asserts are needed to allow Arizona-American to proceed
15 with the White Tanks Facility on its own ("Revised Application"). The Revised
16 Application abandons the previous requests for approval asserted under the Initial
17 Application, and proposes an entirely different means of financing the White Tanks
18 Facility. Arizona-American proposed two options that, under either option, would
19 increase the Hook-Up Fees by substantial amounts. Pursuant to a procedural order
20 dated October 6, 2006, Staff filed its Staff Report on the Revised Application. The Staff
21 Report recommends, in part, that the Hook-Up Fees be increased significantly. On
22 November 8, 2006, MWD filed an Application for Leave to Intervene. In its
23 Application to Intervene, as well as in subsequent comments that it filed, MWD alleged
24 that Arizona-American made various misrepresentations in its Revised Application and
25 that MWD had plans to build its own Plant and could do so less expensively than
26 Arizona-American. Arizona-American filed a response to MWD objecting to the
27 requested intervention and indicated, in part, that Arizona-American is in a better
28 position to build the Plant and can do so more expeditiously in order to meet the new-

1 service water demands in the Agua Fria District. On November 29, 2006, Arizona-
2 American withdrew its objection to MWD's request to intervene and requested an
3 expedited hearing in this matter. The hearing in this matter commenced on March 19,
4 2007 and concluded on March 26, 2007.

5 B. The Developers

6 The Developers are currently developing projects in the Agua Fria District and
7 have each entered into line extension agreements ("LXAs") with Arizona-American for
8 the provision of water service. CHI is owned by D.R. Horton Inc. D.R. Horton is the
9 largest homebuilder in the United States based upon annual sales and closings. CHI is
10 currently developing a master-planned community known as Sarah Ann Ranch in
11 Surprise, Arizona. CHI's portion of the project is approximately 290 acres and includes
12 838 lots. CHI has already spent approximately \$5.9 million on onsite water facilities,
13 offsite water facilities, and Hook-Up Fees, and expects to spend approximately an
14 additional \$1.3 million related to wet water development to provide water service to the
15 lots. CHI's total estimated cost to provide water service to this development is \$7.2
16 million, or approximately \$8,592 per lot.

17 Taylor Woodrow has been building homes in the metro Phoenix area since 2000
18 and, in 2006, built over 1,200 homes and developed several thousand acres. Taylor
19 Woodrow is developing a master-planned community known as Sycamore Farms which
20 has approximately 120 acres and will contain approximately 610 lots. Taylor Woodrow
21 expects to spend approximately \$5.2 million related to the provisioning of water service
22 for Sycamore Farms, or approximately \$8,525 per lot.

23 Courtland has been building homes in the Phoenix area since 1983 and builds
24 approximately 400 to 500 homes per year. Courtland is currently developing a master-
25 planned community known as the Greer Ranch North Development which has
26 approximately 280 acres and contains 878 lots. Courtland has already spent \$5 million
27 on onsite water facilities, offsite backbone infrastructure, and Hook-Up Fees and expects
28 to spend approximately an additional \$1.5 million related to wet water development to

provide water service to its lots. Courtland's estimated cost in providing water to this development is \$6.5 million, or roughly \$7,400 per lot.

C. Reasons for Intervention

Developers intervened in this proceeding and provided testimony regarding the following issues:

1. Arizona-American's application of Hook-Up Fees that have already been paid under its existing tariff;
2. The need for the expeditious construction of a Plant at the lowest cost and the possibility of a new service moratorium if there is a delay in the construction of the Plant; and
3. The need for the provision of a water supply by Arizona-American and/or MWD which can offset the cost of the higher Hook-Up Fees and supplant the necessity for the requirement that developers drill additional wells.

III. Arizona-American's Application of Hook-Up Fees Already Paid

One of the primary reasons for the intervention of the Developers was to ensure that to the extent the Developers have already paid to Arizona-American the required Hook-Up Fees pursuant to the existing Commission-approved Hook-Up Fee tariff as required by their respective LXAs for their projects, that Arizona-American should be precluded from subsequently charging the higher Hook-Up Fee if such fee was subsequently approved by the Commission.⁶ In response, neither Arizona-American nor Staff disagreed with this position with the caveat that Arizona-American must charge the Hook-Up Fee that is in existence at the time such fee is required to be paid pursuant to the terms of the respective LXA or other agreements.⁷ Moreover, Arizona-American indicated that pursuant to the terms of the LXAs, such fees are to be paid at the time of "operational acceptance."⁸ In the uncontroverted surrebuttal testimony of

⁶ Hopper Direct at 3; Wittrock Direct at 3; Iannacone Direct at 3-4.

⁷ Broderick Rebuttal at 16; Becker Rebuttal at 8.

⁸ Broderick Rebuttal at 16.

1 Developers, each Developer demonstrated that their respective projects had achieved
2 operational acceptance for purposes of the LXAs.⁹

3 Arizona-American was willing to enter into a stipulation with each of the
4 Developers affirming that their respective projects had met operational acceptance and
5 that Arizona-American would not charge the higher Hook-Up Fee if the increase was
6 subsequently approved by the Commission. Moreover, consistent with the request
7 made in the surrebuttal testimonies of CHI and Courtland¹⁰, Arizona-American agreed
8 that to the extent any "true-ups" of the Hook-Up Fees already paid are required, that
9 such true-ups would be based upon the tariff that existed at the time the initial Hook-Up
10 Fee was paid. This stipulation was introduced at the hearing and admitted into evidence
11 as Exhibit A-1.¹¹ There was no objection to the admission of this document into
12 evidence by any party.¹² A copy of the stipulation is attached hereto as Attachment A.

13 In accordance with the evidence presented at the hearing, Developers request that
14 the ROO contain the following Findings of Facts and corresponding Ordering
15 Paragraphs:

- 16 1. Arizona American must charge Developers for Hook-Up Fees in
17 accordance with the tariffs that are in effect at the time payment of such
18 fees are required to be paid pursuant to the terms of the applicable line
19 extension agreements that it has entered into.
- 20 2. Pursuant to a stipulation entered into and agreed to between Arizona-
21 American and Intervenors CHI, Courtland, Taylor Woodrow and Trend
22 that was introduced into evidence at the hearing, it is uncontroverted that
23 such Intervenors have already paid to Arizona-American Hook-Up Fees
24 for their respective projects pursuant to the terms of their respective line

25 _____
26 ⁹ Hopper Surrebuttal at 4; Wittrock Surrebuttal at 3; Iannacone Surrebuttal at 3.

27 ¹⁰ Hopper Surrebuttal at 4; Wittrock Surrebuttal at 4.

28 ¹¹ Tr. Vol. I at 40.

¹² *Id.* At 41.

extension agreements based upon the Hook-Up Fee tariff currently in effect for Arizona-American. Moreover, Arizona-American and the Intervenor have agreed that any true-up of Hook-Up Fees that have already been paid will be based on the Commission-approved tariff that existed at the time the payment was made.

3. Accordingly, Arizona-American should apply the Hook-Up Fee tariff consistent with the above.

IV. The Need for the Expeditious Construction of the Plant

It is uncontroverted that there is an immediate need and necessity for a Plant to be constructed and placed into service as expeditiously as possible. Given this need and necessity, Developers have not taken a position as to whether Arizona-American or MWD should construct and/or operate the Plant,¹³ nor have Developers objected to the proposed increase in the Hook-Up Fees.¹⁴ However, given that Arizona-American currently requires that developers of new projects within the Agua Fria District provide wet water for their projects, regardless of when the Plant becomes operational, Arizona-American should be precluded from instituting a new service hook-up moratorium on any project where the developer has or will provide the wet water for the particular project.¹⁵

In his Rebuttal Testimony, Mr. Day testified that “[w]hen Arizona-American determines that the increased demand associated with the development will exceed what Arizona-American can supply to the area, it will require the developer to provide enough water, typically from new wells, to meet the incremental demand. To compensate for the cost of the facilities, Arizona-American will typically credit the developer toward the hook-up fees for the development.” He further testified that “[i]f

¹³ Wittrock Direct at 4; Iannacone Direct at 5.

¹⁴ Wittrock Direct at 3; Iannacone Direct at 4, Hopper Direct at 3. This is predicated on the fact that Developers have already paid Hook-Up Fees pursuant to the existing tariff. See discussion in III above.

¹⁵ Wittrock Direct at 7; Iannacone Direct at 8.

the developer cannot provide acceptable water supplies, then Arizona-American will not set meters until the developer can live up to its obligations under the LXA.”¹⁶

Specifically on the issue of the moratorium, Mr. Day testified as follows:

Q. Arizona American raised the issue of a potential moratorium on new service connections in 2009, if the White Tanks Plant is not built. Can you discuss this?

A. Yes. I can certainly see why developers would be concerned about such a moratorium. I think it is unlikely that Arizona-American would have to actually go to the Commission to request a moratorium. If Arizona-American continues to vigorously enforce its LXAs, we should be able to avoid that last resort. If a developer can provide the required water, Arizona-American will continue to set meters and take on new customers in the development. However, if the water supplies are not delivered, Arizona-American will continue to refuse to set meters until the supplies are delivered.¹⁷

Based upon this undisputed position, Courtland and Taylor Woodrow request that the ROO contain the following:

1. A Finding of Fact stating that Arizona-American has taken the position that if a developer can provide the required supply of water to serve the increased demand associated with that development pursuant to the developers’ LXA, Arizona-American will continue to take on new customers in the development and set meters. Therefore, Arizona-American should be precluded from instituting a new service moratorium in these circumstances.
2. An Ordering Paragraph stating that Arizona-American shall continue to set new meters at any development that has provided the required water supply for such development pursuant to the terms of the line extension or other agreement between Arizona-American and the developer.

¹⁶ Day Rebuttal at 3.

¹⁷ *Id.* at 4.

V. The Need for the Water Supply in the Agua Fria District

This proceeding has brought to the forefront the inherent challenges of bringing new and existing water resources online in the Agua Fria District. In its Direct Testimony, Taylor Woodrow has taken the position that there is no water shortage *per se* in the Agua Fria District as there is an adequate supply of water.¹⁸ This is based upon the premise that if Arizona-American and MWD would work together, there would be sufficient water to meet demand during construction of the Plant and thereafter, thereby negating the need for developers to be required to drill additional wells for Arizona-American while also paying higher Hook-Up Fees.¹⁹ When asked whether Arizona-American would be willing to commit to continue to work with MWD to secure both interim and permanent water supplies from MWD, Mr. Day responded: [“W]e can and will commit to continue to working with MWD.”²⁰

At the hearing, when asked whether Arizona-American would be willing to review the existing LXAs with developers to determine whether the same number of wells would still need to be drilled if the Hook-Up Fee increase was approved and the Plant was assured to be coming on line in the near future, Mr. Day responded “[Y]es. I believe we could do that.”²¹

Accordingly, Courtland and Taylor Woodrow believe that the ROO should contain Findings of Fact and Ordering Paragraphs consistent with the following:

1. Arizona-American should use its best efforts to work with MWD to obtain both short-term and permanent water supplies to negate (where possible) the requirement that additional wells must be drilled during construction of the Plant and thereafter.

¹⁸ Iannacone Direct at 8.

¹⁹ *Id.* at 9; Wittrock Direct at 5- 6; Iannacone Surrebuttal at 5; Wittrock Surrebuttal at 5.

²⁰ Tr. Vol. I at 74.

²¹ *Id.* at 68.

2. In order to preserve existing groundwater resources, and in light of the construction of the Plant, Arizona-American should review its existing line extension and other agreements that it has entered into in the Agua Fria District which require developers to drill new wells in order to determine if the agreements can be amended to reduce the number of required wells.

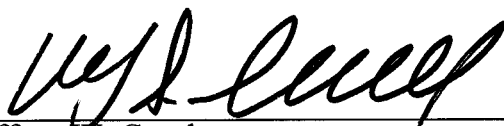
VI. Conclusion

For the foregoing reasons, Developers request that the ROO contain the relief requested herein and supported by the evidence presented in this proceeding.

DATED this 17th day of April, 2007.

SNELL & WILMER L.L.P.

By



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ORIGINAL and thirteen (13) copies
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COPY of the foregoing hand-delivered
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Attachment A

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MIKE GLEASON - Chairman
JEFF HATCH-MILLER
WILLIAM A. MUNDELL
KRISTIN K. MAYES
GARY PIERCE

In the Matter of the Application of
Arizona-American Water Company for
Approvals Associated with a
Transaction with the Maricopa County
Municipal Water Conservation District
Number One

DOCKET NO. W-01303A-05-0718

STIPULATION

Arizona-American Water Company ("Arizona-American"), on the one hand, and Courtland Homes, Inc. ("Courtland"), Taylor Woodrow/Arizona, Inc. ("Taylor Woodrow"), CHI Construction Company ("CHI"), and Trend Homes, Inc. ("Trend") (collectively the "Developers"), on the other hand, through counsel undersigned, hereby stipulate to the following:

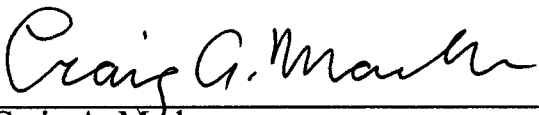
1. Arizona-American has entered into Water Facilities Line Extension Agreements ("LXAs") to provide water service to the Developers' projects commonly known as Greer Ranch North (Courtland), Sycamore Farms (Taylor Woodrow), Sarah Ann Ranch (CHI), and Cortessa (Trend) (collectively the "Projects").
2. The Projects are at operational acceptance for purposes of the LXAs.
3. The Developers have each paid to Arizona-American 100% of the required Water Facility Hook-Up Fees (the "Hook-Up Fees") for the Projects under Arizona-American's existing Arizona Corporation Commission ("ACC") approved tariff.
4. Unless ordered to by the ACC, Arizona-American will not impose or seek to impose higher Hook-Up Fees on the Projects if the ACC subsequently approves an increase to Arizona-American's tariff.

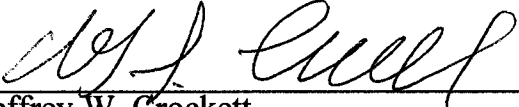
5. Any true-ups to the Hook-Up Fees that may arise in the future relating to the Hook-Up Fees already paid for the Projects will be based on the ACC approved tariff that existed at the time the payment was made.

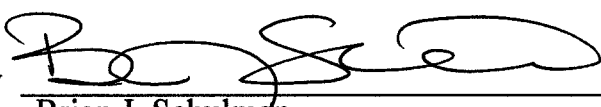
6. This stipulation is not intended to modify the term of any LXA between a Developer and Arizona-American.

7. This stipulation may be offered as an exhibit at any hearing in the above-captioned matter.

DATED this 19th day of March, 2007.

By 
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